

Decision 05-04-010 April 7, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company for: (1) Authority to Sell or Assign Recovery Property to One or More Financing Entities; (2) Authority to Service Recovery Bonds on Behalf of Financing Entities; (3) Authority to Establish Charges Sufficient to Recover Fixed Recovery Amounts and Fixed Recovery Tax Amounts; and (4) Such Further Authority Necessary for PG&E to Carry Out the Transactions Described in this Application. (U 39 M)

Application 04-07-032
(Filed July 22, 2004)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK FOR ITS
SUBSTANTIAL CONTRIBUTION TO DECISION 04-11-015**

This Opinion awards \$11,729.65 to The Utility Reform Network (TURN) for its substantial contribution to Decision (D.) 04-11-015.

1. Background

D.04-11-015 granted Pacific Gas and Electric Company (PG&E) authority under Senate Bill (SB) 772¹ and D.03-12-035 to issue up to \$3.0 billion of Energy Recovery Bonds (Bonds) to refinance PG&E's bankruptcy regulatory asset. TURN actively participated in the proceeding and supported PG&E's request to issue the Bonds. In D.04-11-015, the Commission relied on TURN's support as

¹ 2004 Stats., ch. 46.

one reason to approve the Bonds. The Commission also revised the Administrative Law Judge's (ALJ's) draft opinion to reflect TURN's comments.

On January 18, 2005, TURN filed a request for compensation in the amount of \$11,729.65 for its substantial contribution to D.04-11-015. There was no opposition to TURN's request.

2. Requirements for Compensation

Pub. Util. Code §§ 1801-1812 requires California utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to a Commission proceeding.² Utilities may recover from their ratepayers the compensation paid to intervenors. All of the following requirements must be satisfied for an intervenor to receive compensation:

1. The intervenor must file a timely notice of intent to claim compensation. (§ 1804(a).)
2. The intervenor must be a customer of the utility or a duly authorized representative of utility customers. (§ 1802(b).)
3. The intervenor should file and serve a request for compensation within 60 days of a final order or decision. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor must have made a "substantial contribution" to the proceeding. (§§ 1802(h), 1803(a).)
6. The intervenor's fees must be reasonable. (§§ 1803, 1806.)

Each of the aforementioned requirements is addressed below.

² All statutory references are to the Public Utilities Code.

3. Notice of Intent

Section 1804(a) requires intervenors to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC) or, in special circumstances, at a time specified by the Commission. There was no PHC in this proceeding and the Commission did not specify an alternate time to file an NOI.

In its request for intervenor compensation, TURN provided the information normally included in an NOI. In light of the circumstances of this proceeding, we find the inclusion of TURN's NOI information in its request for compensation satisfies the requirements of § 1804(a).

Section 1804(a)(2)(A)(i) requires NOIs to state the nature and extent of the intervenor's planned participation in the proceeding. Because TURN filed its NOI after the proceeding had concluded, TURN's NOI described the nature and extent of its actual participation. Under these unusual circumstances, we find this satisfies § 1804(a)(2)(A)(i).

Section 1804(a)(2)(A)(ii) requires NOIs to include an itemized estimate of the compensation the intervenor expects to request. Again, because TURN filed its NOI after the proceeding had concluded, TURN provided an itemization of its actual request for compensation. As above, we find this satisfies § 1804(a)(2)(A)(ii).

4. Timing of TURN's Request for Compensation

Section 1804(c) indicates that an intervenor should file and serve a request for compensation within 60 days of a final order or decision. Decision 04-11-015 was issued on November 19, 2004. TURN filed and served its request for compensation on January 18, 2005, which was 60 days after D.04-11-015 was issued. Therefore, TURN has satisfied § 1804(c).

5. Customer

To receive compensation, an intervenor must be a customer as defined by § 1802(b). The statute defines a “customer” as including a representative of a group or organization authorized by its articles of incorporation to represent the interest of residential customers who receive bundled electric service from an electrical corporation.

PG&E is an electrical corporation. TURN is a non-profit organization that is authorized by its articles of incorporation to represent the interests of residential customers that receive bundled service from electrical corporations. D.98-04-059 requires groups such as TURN to provide a copy of their articles of incorporation or a reference to a previous filing.³ TURN states that it filed its articles of incorporation in Application (A.) 99-12-024, and that its articles of incorporation have not changed since then. D. 98-04-059 also directs groups such as TURN to indicate the percentage of their members that are residential ratepayers.⁴ TURN maintains that it has around 30,000 dues paying members, and that the vast majority of its members are residential ratepayers.

We find that TURN is a “customer” as that term is defined by § 1802(b).

6. Significant Financial Hardship

Section 1803(b) limits compensation to those customers for whom participation imposes a significant financial hardship. Section 1804(b) also states that a finding of significant financial hardship in one proceeding creates a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding.

³ D.98-04-059, *mimeo.*, p. 30.

⁴ D.98-04-059, Finding of Fact 12.

TURN received a finding of significant financial hardship in a ruling dated July 27, 2004, issued in Rulemaking 04-04-003. TURN's participation in the instant proceeding commenced within one year of that ruling, so the rebuttable presumption applies here. Nothing has been introduced in this proceeding to refute the rebuttal presumption. Therefore, we find that TURN has satisfied the requirement of significant financial hardship.

7. Substantial Contribution

To receive compensation, a customer must make a "substantial contribution" to a proceeding. The Commission considers the following factors in deciding whether a customer has made a substantial contribution:

- Whether the ALJ or Commission adopted any factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(h).)
- In cases where the customer's contentions or recommendations paralleled those of another party, whether the customer's participation materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. (§§ 1802(h) and 1802.5.)

Even if the Commission does not adopt the customer's recommendations, the Commission may award compensation if it finds the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations, the Commission may find that the customer made a substantial contribution.

The Bonds approved by D.04-11-015 represent the culmination of the modified settlement agreement between TURN and PG&E that was approved by the Commission in D.03-12-035. TURN's participation in this proceeding focused on ensuring that the Bonds proposed by PG&E in A.04-07-032 conformed to the

modified settlement agreement. Specifically, TURN conferred with PG&E regarding the contents of A.04-07-032 and reviewed all of PG&E's filings to ensure consistency with D.03-12-035. TURN also submitted comments on the ALJ's draft financing order that recommended several revisions. A copy of TURN's comments is reproduced in Appendix A of this Opinion. The final Financing Order issued by the Commission adopted all of TURN's proposed revisions to the draft financing order.

We find that TURN made a substantial contribution to D.04-11-015 and that TURN's participation did not duplicate the work of other parties.

8. Reasonableness of Requested Compensation

TURN requests \$11,729.65 in compensation, broken down as follows:

Expense	Hours	Hourly Rate	Year	Fees
<u>Attorney Fees</u>				
Michel Florio	16.50	\$470.00	2004	\$7,755.00
Michel Florio (claim preparation)	1.25	\$235.00	2005	\$ 293.75
Robert Finkelstein ¹	0.25	\$395.00	2004	\$ 98.75
Robert Finkelstein (claim preparation)	3.50	\$197.50	2005	\$ 691.25
Attorney Fees Subtotal	21.5			\$8,838.75
<u>Consultant Fees</u>				
Margaret Meal	4.50	\$150.00	2004	\$ 675.00
Sandra McDonald	8.75	\$250.00	2004	\$2,187.50
Consultant Fees Subtotal	57			\$2,862.50
Photocopying Expense				28.40
Total Claim	78.5			\$11,729.65
Note 1: TURN erroneously calculated the requested award for Robert Finkelstein at \$97.50.				

Each component of TURN's request must be reasonable. Only those costs associated with the customer's substantial contribution are eligible for

compensation. In addition, the benefits to ratepayers from the customer's participation must exceed the cost of the customer's participation.

We find that TURN's participation was productive; the Bonds authorized by D.04-11-015 should save ratepayers millions of dollars, which far exceeds the cost of TURN's participation. We also find the total number of hours claimed by TURN to be reasonable. TURN documented its claimed hours by presenting a daily breakdown of the hours spent by its attorneys and consultants in this proceeding, accompanied by a brief description of each activity.⁵

Section 1806 requires the Commission to compare the requested hourly rates for TURN's employees and consultants to the market rates for similar services provided by comparably qualified persons. TURN requests an hourly rate of \$470 and \$395 for work performed during 2004 by attorneys Michel Florio and Robert Finkelstein, respectively.⁶ The requested hourly rate of \$470 for Florio was approved by the Commission in D.05-01-029.⁷ The requested hourly rate of \$395 for Finkelstein is 8% higher than the hourly rate of \$365 approved by D.03-08-041 for work performed in 2003. TURN notes that the 8% increase in Finkelstein's hourly rate is consistent with the 8% escalation factor adopted by Resolution ALJ-184.⁸ We find the requested hourly rates for Florio and Finkelstein in this proceeding to be reasonable, and we approve these rates.

⁵ TURN separately identified the hours spent traveling and preparing its compensation request. TURN also represents that it has not recovered any of its costs for participating in this proceeding from any grant or other outside source.

⁶ TURN seeks one-half of these hourly rates for the time spent by its attorneys to prepare TURN's request for compensation. The preparation time was incurred in January 2005.

⁷ D.05-01-029, *mimeo.*, p. 9.

⁸ An 8% increase to Finkelstein's 2003 hourly rate of \$365 yields an hourly rate of \$394.2. TURN rounded that figure to the nearest \$5 increment.

TURN requests hourly rates of \$150 and \$250 for work performed in 2004 by Margaret Meal and Sandra McDonald, respectively. These are the same hourly rates previously approved by the Commission for work performed by these consultants in 2003.⁹ We find the requested hourly rates for Meal and McDonald to be reasonable, and we approve these rates.

TURN requests recovery of \$28.40 for photocopying costs that TURN incurred to file and serve its pleadings in this proceeding. We find these costs to be reasonable, and we approve them.

9. Award

We award \$11,729.65 to TURN as set forth in the following table:

Expense	Hours	Hourly Rate	Year	Fees
<u>Attorney Fees</u>				
Michel Florio	16.50	\$470.00	2004	\$7,755.00
Michel Florio (claim preparation)	1.25	\$235.00	2005	\$ 293.75
Robert Finkelstein	0.25	\$395.00	2004	\$ 98.75
Robert Finkelstein (claim preparation)	3.50	\$197.50	2005	<u>\$ 691.25</u>
Attorney's Fees Subtotal				\$8,838.75
<u>Consultant Fees</u>				
Margaret Meal	4.50	\$150.00	2004	\$ 675.00
Sandra McDonald	8.75	\$250.00	2004	<u>\$2,187.50</u>
Consultant Fees Subtotal				\$2,862.50
Photocopying Expense				28.40
Total Claim				\$11,729.65

Consistent with previous Commission decisions, interest shall accrue on the award beginning on the 75th day after TURN filed its compensation request and ending on the day the award is paid in full. The interest rate shall be the rate

⁹ D.04-08-025, *mimeo.*, p. 64.

earned on prime three-month commercial paper as reported in Federal Reserve Statistical Release H.15. Pursuant to § 1807, the award shall be paid by PG&E, as it is the regulated entity in this proceeding.

We remind TURN and all intervenors that Commission staff may audit an intervenor's records related to an award. Additionally, intervenors must create and retain accounting records and other documentation to support all claims for intervenor compensation. Such records should identify the specific issues for which an intervenor requested compensation, the actual time spent by each employee or consultant, hourly rates, fees, and any other costs for which compensation was claimed.

10. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure (Rule), the otherwise applicable 30-day comment period for this Opinion is waived.

11. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN made a substantial contribution to D.04-11-015 as described herein.
2. TURN's request for \$11,729.65 in compensation for its substantial contribution to D.04-11-015 is reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$11,729.65 for its substantial contribution to D.04-11-015.

3. Per Rule 77.7(f)(6), the comment period for this Opinion may be waived.
4. The following Order should be effective immediately so that TURN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$11,729.65 in compensation for its substantial contribution to Decision 04-11-015.
2. The amount awarded in Ordering Paragraph (OP) 1 shall accrue interest beginning April 3, 2005, the 75th day after TURN filed its request for compensation, and continuing until full payment is made. The interest rate shall be the rate earned on prime three-month commercial paper as reported in Federal Reserve Statistical Release H.15.
3. Within 30 days of the effective date of this Order, Pacific Gas and Electric Company shall pay to TURN the total amount awarded in OPs 1 and 2.
4. Application 04-07-032 is closed.

This Order is effective today.

Dated April 7, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0504010
Contribution Decision(s):	D0411015
Proceeding(s):	A0407032
Author:	ALJ Kenney
Payer(s):	Pacific Gas and Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	1/18/05	\$11,729.65	\$11,729.65	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michel	Florio	Attorney	The Utility Reform Network	\$470	2004	\$470
Michel	Florio	Attorney	The Utility Reform Network	\$470 ¹	2005	\$470
Robert	Finkelstein	Attorney	The Utility Reform Network	\$395	2004	\$395
Robert	Finkelstein	Attorney	The Utility Reform Network	\$395 ¹	2005	\$395
Margaret	Meal	Consultant	The Utility Reform Network	\$150	\$2004	\$150
Sandra	McDonald	Consultant	The Utility Reform Network	\$250	\$2004	\$250

Note 1: One-half of the approved hourly rates shall be used to compensate TURN for the time spent by Florio and Finkelstein in 2005 to prepare TURN's request for compensation.

Appendix A

COMMENTS OF TURN ON THE DRAFT FINANCING ORDER

On July 22, 2004, Pacific Gas and Electric Company (PG&E) filed [A.04-07-032] to authorize and implement the refinancing of the Regulatory Asset created by Decision No. (D.) 03-12-035 via a securitized financing backed by a Dedicated Rate Component (DRC), as provided in Senate Bill (SB) 772. On October 19, Administrative Law Judge (ALJ) Kenney issued a Draft Decision (DD) that would approve the proposed transaction. The Utility Reform Network (TURN) hereby submits its comments supporting the DD, and suggesting a few minor clarifying amendments thereto. It is TURN's understanding the PG&E will submit a more extensive list of proposed clarifications and modifications that are intended: 1) to ensure that the necessary legal opinions can be issued, and 2) to obtain the highest possible credit ratings for the bonds. TURN has reviewed a preliminary draft of PG&E's comments and at this point does not believe that we will take exception to any of the changes that the company will propose.

The following are the necessary changes that TURN has identified, independent of the applicant's more thorough review:

- At the top of page 40 of the DD, the first full sentence currently begins with the words: "However, DA customers that are subject to SB 722 . . ." First of all, the statutory reference should be to SB 772, not SB 722. More substantively, TURN believes that the word "continuous" should be inserted before "DA customers," so that the opening phrase would read: "However, **continuous** DA customers that are subject to SB 772 . . ." The previous sentence that carries over from page 39 properly describes the treatment of the vast majority of current direct access (DA) customers who

switched to that service between February 1 and September 20 of 2001 and are thus subject to the capped DA Cost Responsibility Surcharge (CRS) of 2.7 cents per kwh. The initial sentence on page 40, as it is currently written, would appear to contradict the carryover sentence. Insertion of the word “continuous” in the first full sentence serves to make sense of the entire passage. “Continuous” DA customers who never purchased Department of Water Resources (DWR) power (because they stayed on DA) are exempt from the DWR bond charge and the DWR power charge. It is clearly these customers that are being referenced in the sentence in question, because such continuous DA customers are, in fact, subject only to the Competition Transition Charge (CTC) and the Regulatory Asset Charge (to be replaced by the DRC bond charge), and will therefore see a rate reduction due to the replacement of Regulatory Asset by the Energy Recovery Bonds.

- On page 68, in Finding of Fact #1, subpart iii, the words “plus” and “less” have been inadvertently reversed the first time that they appear, in the fourth and sixth lines respectively. The terms are used correctly later in the subpart, where the word “minus” appears in the fourth-to-last line, and the word “plus” appears in the next-to-last line. The language so revised actually makes sense, because energy supplier refunds need to be subtracted from the amount to be financed, while issuance costs are added to that amount. As corrected, the paragraph would read as follows:

“The Bonds may be issued in one or two series. If PG&E elects to issue two series of Bonds, the first series will be issued in an aggregate principal amount equal to the sum of the expected unamortized after-tax portion of the Regulatory Asset, **less** any energy supplier refunds expected to be received by PG&E prior to the date the first series is issued, **plus** the estimated cost of issuing the first series of Bonds. The second series of Bonds will be issued in an aggregate principal amount equal to the lesser of (i) the difference between \$3.0 billion and the principal amount of the first series of Bonds, or (ii) the sum of the expected amount of future federal income taxes and State franchise taxes associated with the DRC for each series of Bonds, minus energy supplier refunds expected to be received by PG&E on or after the date on which the first series of Bonds is issued but before

the date the second series of Bonds is issued, plus the estimated cost of issuing the second series of Bonds.”

- On page 87, Conclusion of Law #90 correctly states the Commission’s intent that CARE, medical baseline and residential Tier 1 and Tier 2 customers not receive a rate decrease as a result of the issuance of the ERBs. However, this finding needs to be expanded to indicate that, consistent with D.04-02-062, the decrease that does not accrue to Tiers 1 and 2 will be applied to Tiers 3 and 4 instead (the same does NOT apply with respect to CARE and medical baseline usage). This approach would be entirely consistent with the treatment of the residential class in D.04-02-062, wherein the overall rate reduction for the residential class was determined first, and that full amount was then applied exclusively to the upper tiers. This can be accomplished by adding the following sentence to COL #90: ***“The additional revenues derived from the rate increase for the generation rate component in Tiers 1 and 2 should be applied to reduce generation rates in Tiers 3 and 4.”*** This will ensure that the residential class obtains the intended amount of savings from the issuance of the ERBs, with those savings accruing entirely to the 3rd and 4th tiers. [A similar issue arises with respect to Ordering Paragraph #62 on page 102, but if the proposed language is added to COL #90, TURN does not believe that it needs to be restated again in OP #62.]

TURN urges this Commission to approve the DD, modified in a manner consistent with these comments, at the earliest possible opportunity. Similarly, a decision must be reached on the municipal departing load (MDL) issue in R.02-01-011 in order for the bond transaction to move forward smoothly and expeditiously.

[End of Appendix A]